

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

CIVIL COMPLAINT NO:
1:22-CV-10905

RANDALL BOCK M.D.)
Plaintiff,)
v.) JURY DEMANDED
CANDACE LAPIDUS SLOANE)
and GEORGE ABRAHAM, both solely in)
their individual capacities,)
Defendants.)

PLAINTIFF'S MOTION TO DISQUALIFY DEFENSE COUNSEL ERNST

On February 8, 2023, defendants acquired the services of yet another private corporate attorney from WilmerHale, and again, suspiciously at public expense. Benjamin N. Ernst (BBO #693849), with a history of patent law litigation, has filed a notice of appearance in this antitrust case that is proceeding, over plaintiff's objection, before Judge Gorton.

Attorney Ernst has previously interned for Judge Gorton.

The prejudice against plaintiff is immediately evident and extreme. This intentional prejudice is on top of corporate attorneys from WilmerHale defending Sloane and Abraham for free, while plaintiff has to prosecute his claim *pro se* because Sloane and Abraham ground him to dust economically.

Plaintiff also renews his *per se* objection to the corruption involved in WilmerHale attorneys acting as Special Assistant Attorneys General given that it remains unknown what benefit accrues to WilmerHale from this improper "Lend-Lease" arrangement.

It is immediately unacceptable that Attorney Ernst be allowed to appear in this case before Judge Gorton. A judge shall avoid situations that would create in reasonable minds even a "perception of impropriety." Because of the "uniqueness and value" of "the extraordinarily close relationship that exists between judge and law clerk", "the Court has an institutional duty to the

public—independent of any litigant’s interest or consent—to assure that there is never even a hint that it is being exploited to advance a private party’s interest in a lawsuit.” *Monument Builders of Pa., Inc. v. Cath. Cemeteries Ass’n, Inc.*, 190 F.R.D. 164 (E.D. Pa. 1999)

“A law clerk, by virtue of his position, is obviously privy to his judge’s thoughts in a way the parties cannot be.” *Fredonia Broadcasting v. RCA*, 569 F.2d 251 (5th Cir. 1978) An intern serves in the same chamber and is equally privy to the judge’s mode of thought and way of working. This after all is the whole point of an internship, meaning it is a feature, not a bug.

It is impossible to avoid the conclusion that this is the sole reason AG Andrea Campbell has chosen private WilmerHale patent attorney Benjamin Ernst to defend Sloane and Abraham at public expense in this antitrust suit, and not because Attorney Ernst brings in a wealth of experience in fighting antitrust suits and evaluating state action immunity defenses.

The mandatory ethical standard of avoiding even the perception of impropriety requires that Attorney Ernst be disqualified.

CONCLUSION

This motion to disqualify must be granted.

Respectfully submitted, under the pains and penalties of perjury,

February 13, 2023

/s/ Randall Bock M.D.
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CERTIFICATE OF SERVICE

Dr. Bock certifies that he served a copy of this motion upon defendants via counsel via email, after conferring with counsel per LR 7.1. During conferral, plaintiff was informed that Attorney Ernst is the sole lawyer on this case and that Attorney Rauvin Johl has left, which is news given that plaintiff was not informed and no notice of withdrawal was docketed.

February 13, 2023

/s/ Randall Bock M.D.
RANDALL BOCK M.D.